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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-653**

12 **CASSANDRA HERNANDEZ**
13 **aka CASSANDRA MICHELLE OCHOA**
14 **41731 Stetson Avenue**
Hemet, CA 92544

A C C U S A T I O N

15 **Registered Nurse License No. 524965**
16 **Public Health Nurse Certification No. 57267**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about August 8, 1996, the Board of Registered Nursing (Board) issued
25 Registered Nurse License Number 524965 to Cassandra Hernandez aka Cassandra Michelle
26 Ochoa (Respondent). The Registered Nurse License was in full force and effect at all times
27 relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.
28 On or about April 16, 1997, the Board issued Public Health Nurse Certification No. 57267 to

1 Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant
2 to the charges brought herein and will expire on December 31, 2011, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board of Registered Nursing, Department of
5 Consumer Affairs, under the authority of the following laws. All section references are to the
6 Business and Professions Code unless otherwise indicated.

7 4. Section 2750 of the Business and Professions Code ("Code") provides that the Board
8 may discipline any licensee, including a licensee holding a temporary or an inactive license, for
9 any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Section 2764 of the Code provides that the expiration of a license shall not deprive
11 the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to
12 render a decision imposing discipline on the license. Under section 2811, subdivision (b), an
13 expired license may be renewed at any time within eight years after expiration.

14 STATUTORY PROVISIONS

15 6. Section 482 of the Code states:

16 "Each board under the provisions of this code shall develop criteria to evaluate the
17 rehabilitation of a person when:

18 "(a) Considering the denial of a license by the board under Section 480; or

19 "(b) Considering suspension or revocation of a license under Section 490.

20 "Each board shall take into account all competent evidence of rehabilitation furnished by
21 the applicant or licensee."

22 7. Section 490 of the Code provides that a board may suspend or revoke a license on the
23 ground that the licensee has been convicted of a crime substantially related to the qualifications,
24 functions, or duties of the business or profession for which the license was issued..

25 8. Section 493 of the Code states:

26 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
27 the department pursuant to law to deny an application for a license or to suspend or revoke a
28 license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 9. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 "....

14 (f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof."

17 "...."

18 10. Section 2762 of the Code states:

19 "In addition to other acts constituting unprofessional conduct within the meaning of this
20 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
21 following:

22 "....

23 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
24 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
25 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
26 himself or herself, any other person, or the public or to the extent that such use impairs his or her
27 ability to conduct with safety to the public the practice authorized by his or her license.

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“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

REGULATIONS

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

“(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

12. California Code of Regulations, title 16, section 1445 states:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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1 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
2 Penal Code.

3 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

4 COST RECOVERY

5 13. Section 125.3 of the Code provides that the Board may request the administrative law
6 judge to direct a licensee found to have committed a violation or violations of the licensing act to
7 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(December 17, 2007, Conviction for Speed Exhibition on November 16, 2007)**

10 14. Respondent is subject to disciplinary action under Code sections 490 and 2761,
11 subdivision (f), in that she was convicted of a crime substantially related to the qualifications,
12 functions and duties as a registered nurse. The circumstances are as follows:

13 a. On December 17, 2007, in a criminal proceeding entitled *The People of the State of*
14 *California v. Cassandra M. Hernandez* in Los Angeles Superior Court, case number 7MP12394,
15 Respondent was charged with violation of Vehicle Code section 23152, subdivision (a), driving
16 under the influence of alcohol, and violation of Vehicle Code section 23152, subdivision (b),
17 driving with a blood alcohol content (BAC) of 0.08 percent or more, and as a result of a plea
18 bargain was convicted by her plea of nolo contendere for violating Vehicle Code section 23109,
19 subdivision (c), exhibition of speed, a misdemeanor, with the DUI charges dismissed.

20 b. On December 17, 2007, Respondent was sentenced and granted summary probation
21 for a period of 24 months under the following terms and conditions: pay various fines and fees or
22 serve 8 days in the Los Angeles County Jail, perform 8 days of service with Cal-Trans or 118
23 hours of community service, ordered not to drive after drinking alcohol or taking drugs, not to
24 drive without a valid driver's license or without liability insurance, and to obey all laws and
25 orders of the court.

26 c. The facts that led to the conviction were that on November 16, 2007, in Los Angeles,
27 California, two Los Angeles Police Department officers noticed a white Nissan Altima, traveling
28 westbound in the number 2 lane on Sunset Blvd. approaching Crescent Heights, with all vehicle

lights off during darkness. The officers followed the white Nissan Altima to the intersection of Hiller and Selma Avenue, where the driver of the white Nissan Altima did not come to a complete stop at a posted stop sign. The officers conducted a traffic stop and Respondent stated she stopped because her female passenger friend had to use the restroom and could not wait anymore. Respondent stated that the vehicle belonged to the passenger and that she was not able to turn on the lights. When the officers asked Respondent if she had consumed any alcoholic beverages, she stated she had drunk two glasses of champagne. A sobriety test was conducted and Respondent agreed to a PAS device test and gave two breath samples resulting in a BAC of .09 and .08. Respondent was placed under arrest and transported to the Hollywood Station where again Respondent consented to take a breath test resulting in a BAC of .09. Respondent was booked at the Van Nuys station.

SECOND CAUSE FOR DISCIPLINE

(August 7, 2009, Conviction for Reckless Driving on August 17, 2008)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime substantially related to the qualifications, functions and duties as a registered nurse. The circumstances are as follows:

a. On August 7, 2009, in a criminal proceeding entitled *The People of the State of California v. Cassandra Michelle Hernandez aka Cassandra Michelle Ochoa* in Riverside Superior Court, Banning case number BAM036640, Respondent was charged with violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and as a result of a plea bargain was convicted by her plea of guilty for violating Vehicle Code section 23103, subdivision (a), reckless driving, a misdemeanor, with the DUI charge dismissed.

b. On August 7, 2009, Respondent was sentenced and granted summary probation for a period of 36 months under the following terms and conditions: obey all laws and orders of the court, be committed to the custody of the Riverside County Sheriff for 5 days or as authorized by the RSO Weekender Program (with credit for 2 days time served), and pay various fines and fees.

c. The facts that led to Respondent's conviction were that on August 17, 2008, Respondent was driving from Morongo Casino to Hemet on I-10 just east of 22nd Street when

1 two California Highway Patrol (CHP) officers traveling behind Respondent noticed her gray
2 colored Acura TL swerving from lane to lane. After a traffic stop was made, the officer noticed a
3 smell of an alcoholic beverage coming from inside the vehicle, noticed that Respondent's eyes
4 were red, and watery, and that her speech was slurred. Respondent stated she had consumed one
5 glass of wine earlier in the evening while dining at Morongo Casino. Field sobriety tests (FSTs)
6 were performed and Respondent did not perform the FSTs as explained or as demonstrated.
7 Respondent was placed under arrest for driving under the influence of an alcoholic beverage.
8 Respondent requested a breath test when advised of Implied Consent and her breath test yielded
9 results of .07 blood alcohol content.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Using Alcohol to an Extent Dangerous to Self and Others)**

12 16. Respondent's license is subject to discipline under Code section 2762,
13 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is
14 set forth in paragraphs 14 and 15 above, which are incorporated here by this reference.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Criminal Conviction Involving the Consumption of Alcohol)**

17 17. Respondent's license is subject to discipline under Code section 2762,
18 subdivision (c), in that Respondent was convicted of criminal offenses involving the consumption
19 of alcohol as set forth in paragraphs 14 and 15 above, which are incorporated here by this
20 reference.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 524965, issued to
25 Cassandra Hernandez aka Cassandra Michelle Ochoa;

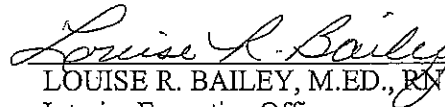
26 2. Revoking or suspending Public Health Nurse Certification Number 57267, issued to
27 Cassandra Hernandez aka Cassandra Michelle Ochoa;

1 3. Ordering Cassandra Hernandez aka Cassandra Michelle Ochoa to pay the Board of
2 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.

5
6 DATED: _____

6/21/10



LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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